



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90431 / November 13, 2020]

Securities Exchange Act of 1934

In the Matter of
NYSE Arca, Inc.
11 Wall St.
New York, NY 10005
File No. SR-NYSEArca-2019-01

Order Setting Aside the Order by
Delegated Authority Disapproving
SR-NYSEArca-2019-01

On January 28, 2019, NYSE Arca, Inc. (“NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Bitwise Bitcoin ETF Trust under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the Federal Register on February 15, 2019.³ On March 29, 2019, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Division of Trading and Markets (“Division”), for the Commission pursuant to delegated authority, designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On May 7, 2019, NYSE Arca filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed, and on May 14, 2019, the Division, for the Commission pursuant to delegated authority, published the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85093 (Feb. 11, 2019), 84 FR 4589.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85461, 84 FR 13339 (Apr. 4, 2019).

change, as modified by Amendment No. 1, for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On August 12, 2019, the Division, for the Commission pursuant to delegated authority, extended the period for consideration of the proposed rule change, as modified by Amendment No. 1.⁸ On October 9, 2019, the Division, for the Commission pursuant to delegated authority,⁹ disapproved the proposed rule change, as modified by Amendment No. 1.¹⁰

On October 15, 2019, the Secretary of the Commission notified NYSE Arca that, pursuant to Commission Rule of Practice 431,¹¹ the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority was stayed until the Commission orders otherwise.¹² On November 12, 2019, the Commission issued a scheduling order allowing the filing of additional statements.¹³

On January 13, 2020, NYSE Arca withdrew the proposed rule change (SR-NYSEArca-2019-01).¹⁴

Under Commission Rule of Practice 431(a), the Commission may “affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 85854, 84 FR 23125 (May 21, 2019).

⁸ See Securities Exchange Act Release No. 86629, 84 FR 42036 (Aug. 16, 2019).

⁹ 17 CFR 200.30-3(a)(12).

¹⁰ See Securities Exchange Act Release No. 87267, 84 FR 55382 (Oct. 16, 2019) (“Delegated Order”).

¹¹ 17 CFR 201.431.

¹² See Letter from Secretary, Commission, to Michael Cavalier, Counsel, and David De Gregorio Senior Counsel, Intercontinental Exchange/NYSE (Oct. 15, 2019), available at <https://www.sec.gov/rules/sro/nysearca/2019/34-87267-letter.pdf>.

¹³ See Securities Exchange Act Release No. 87503, 84 FR 63699 (Nov. 18, 2019).

¹⁴ See letter from David De Gregorio, Senior Counsel, NYSE Arca, to Secretary, Commission, dated Jan. 13, 2020, available at <https://www.sec.gov/rules/sro/nysearca/2019/34-87267-nysearca-withdrawal.pdf>.

pursuant to” delegated authority.¹⁵ We find that, in light of the NYSE Arca’s withdrawal of the proposed rule change, it is appropriate to set aside the Delegated Order.

Accordingly, IT IS ORDERED that the October 9, 2019, order disapproving by delegated authority NYSE Arca’s proposed rule change number SR-NYSEArca-2019-01, be, and it hereby is, set aside.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁵ 17 CFR 201.431(a).